

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ERNEST N. BENJAMIN,
PETITIONER;
V.
LUIS SPENCER,
RESPONDENT,

CIVIL ACTION NO. 2004-11025-JTL

PETITIONER'S REPLY TO THE MAGISTRATE'S
REPORT AND RECOMMENDATION ON
PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

OFFICE OF
JUDGE B. COLLINGS
MAGISTRATE JUDGE

JUN 23 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Comes now, Ernest N. Benjamin, petitioner in pro-se' and moves this court to record and consider his concurrence in part and objections in part to the above entitled order, pursuant to F.R.Civ.P RULE 72(b), and states as follows;

- 1) Petitioner will concede to the statement of docketing sequences as stated in the above entitled report.
- 2) Petitioner will concur with the Recommendation in the first paragraph (lines 1-3).
- 3) The petitioner objects to the remainder of the Magistrate's recommendation, in so much as follows;

- a) petitioner would move that the nunc pro tunc order be retroactive to the April 12, 2002 date, and he be allowed to raise his objections to that report, prior to the dismissal.
- b) petitioner would move this court allow the attached Motion to Amend Petition for Writ of Habeas Corpus, in so much as the "01-10748" petition be amended to the current "04-11025" petition, and that such amendment be nunc pro tunc to the above requested date.

Insomuch as the petitioner was and continues to plead in pro per and is not knowledgeable in law, neither has he the former documents from the dated petition, petitioner moves this court to consider the Magistrate's

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Report (#18) wherein his honor states on page 2 that, "[O]n May 20, 2004, the instant petition was filed, The grounds stated in the 01-10748 petition are, in large measure, identical to those stated in the instant petition."

There would be little if any prejudice to the respondent, and by allowing the requests of the petitioner, this court would erase the prejudice suffered by the clerical errors of the past.

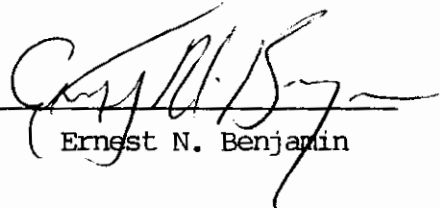
INCORPORATION OF PETITIONER'S
MOTION TO AMEND PETITION

Petitioner would move this court to incorporate the attached Motion to Amend Petition, within the instant reply.

UNDER PENALTIES OF PERJURY

DATED: JUNE, 23, 2005

SO SWORN:


Ernest N. Benjamin